

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the authority set forth in Section 2 in the Towing Vehicles Rulemaking Authority Temporary Act of 2002, effective May 2, 2002 (D.C. Law 14-126; D.C. Official Code §47-2850 (2001)), and Mayor's Order 2002-139, dated August 7, 2002, hereby gives notice of the adoption of an entirely new Chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR).

Previous Notices of Proposed Rulemaking were published in the D.C. Register on February 15, 2002 (49 DCR 1279), August 16, 2002 (49 DCR 7923), October 11, 2002 (49 DCR 9302), and November 29, 2002 (49 DCR 10926). Comments were received and cumulatively incorporated into the November 29, 2002 proposed rulemaking that was approved by the Council of the District of Columbia on March 18, 2003. Accordingly, these rules are effective June 16, 2003.

An incorrect version of the Notice of Final Rulemaking that was previously published in the D.C. Register on March 28, 2003 (50 DCR 2473), is rescinded.

These rules replace Chapter 4, Title 16 DCMR, Towing Service for Motor Vehicles, in its entirety to: establish procedures for licensure of towing service providers; establish rules pertaining to public tows and private tows; establish new, specific requirements for tow truck equipment and markings; identify specific prohibited acts, and establish new penalty and enforcement procedures.

Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), chapter 4, is amended to read as follows:

Chapter 4 Towing Service for Motor Vehicles

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400 GENERAL PROVISIONS

- 400.1 These regulations shall become effective 90 days from the date of Council approval.
- 400.2 Except as provided herein, the provisions of this chapter shall apply to every person and entity who provides, or offers to provide, towing services within the District of Columbia, and shall apply to every person and entity who provides, or offers to provide, storage facilities for towed vehicles.
- 400.3 The provisions of this chapter shall not apply to the towing of vehicles by the government agency that owns or controls them.
- 400.4 The provisions of this chapter shall not apply to the towing of vehicles by any tow truck owned or operated by an entity or agency of the federal government or the District of Columbia Government.
- 400.5 The provisions of this chapter shall not apply to the towing of vehicles by tow trucks owned by the person or entity that owns the towed vehicles, where the tow trucks are used only to tow the tow truck owner's own vehicles and tow services are not offered to the public.
- 400.6 The provisions of this chapter shall not apply to: vehicles towed into or through the District of Columbia if the tow originates in another jurisdiction and the tow truck is licensed in that other jurisdiction, or to tow trucks registered in another jurisdiction responding to a call from the owner or operator for the removal of a motor vehicle from the District into another jurisdiction, provided that the tow truck is not equipped with a radio receiver capable of being tuned to the Metropolitan Police Radio wave lengths or frequencies.
- 400.7 Nothing contained in this chapter shall preclude any entity of the Government of the District of Columbia from establishing policies and procedures governing the towing of vehicles by or for that entity, provided that such additional policies and procedures are consistent with the provisions of this chapter.
- 400.8 Upon demand by the owner or operator of a towed vehicle, a towing business shall provide the name, address, and current telephone number of the towing business's insurance carrier, and the account number of the insurance policy.

401 INSPECTIONS AUTHORIZED

- 401.1 The Department of Consumer and Regulatory Affairs (DCRA) and other authorized government officials shall have authority to inspect towing businesses and towing service storage lots to determine compliance with these regulations. All violations discovered during inspections shall be reported to the Director, who

may fine, suspend, or revoke the licenses of towing businesses, tow trucks, or towing service storage lots in accordance with this chapter.

- 401.2 Before licensing a towing business, a tow truck, or a towing service storage lot, and at any time while a license or endorsement is in effect, a towing-related business shall permit the Director and other authorized government officials or their agents to inspect towing equipment, tow trucks, towing service storage lots, and any logs or documents related to towing services initiated within the District of Columbia.
- 401.3 To ensure compliance with these regulations, towing service storage lots shall be subject to periodic and random unannounced inspections by officials of DCRA, and officials of other government agencies authorized to inspect towing-related businesses and vehicles in the District of Columbia.
- 401.4 No person shall interfere with an inspection authorized under this section.
- 401.5 Copies of all documents, including any Notices of Infraction, computerized data, electronic records, and log book entries regarding the towing or impounding of a vehicle by a towing business or towing service storage lot shall be maintained at the primary location of the towing business indicated on the application submitted in accordance with §402, for a period of not less than three (3) years. An owner, tow truck operator, or other employee of the towing business or towing services storage lot shall surrender or arrange the surrender of such records upon lawful demand by the Director, or his/her designated agent, or other authorized government official, within one (1) hour of the time of such demand.
- 401.6 After demand has been made for records pertaining to any particular transaction, no record may be created and submitted as evidence or explanation of any towing service that had already been provided, except as may be required by an authorized government official during legal proceedings.

402 LICENSES REQUIRED FOR TOWING BUSINESSES AND TOWING SERVICE STORAGE LOTS

- 402.1 No person or entity may own or operate a towing business without having first obtained a Master Business License and a Master Business License Endorsement for a Towing Business.
- 402.2 No person or entity may own or operate a towing service storage lot without having first obtained a Master Business License and a Master Business License Endorsement for a Towing Service Storage Lot.
- 402.3 Each person or entity making application for a Master Business License Endorsement for a Towing Business shall submit relevant information requested

by the Director, in a form and manner specified by the Director, which information shall include the following:

- (a) The trade name, primary location of business, and primary phone number of the towing business;
- (b) A list of all other locations from which the towing business will operate, and the phone numbers for such locations;
- (c) The name, address, and telephone number of each person or entity with an ownership interest in the towing business;
- (d) The primary storage location, year, make, model, Vehicle Identification Number (VIN), and license plate number of each tow truck that will be used by the towing business;
- (e) A list of the names, addresses, dates of birth, driver's license numbers, and Social Security numbers of all tow truck operators, employees, agents and contractors who will be involved in the towing business;
- (f) The location and description of the towing service storage lot to be used for the storage of towed vehicles, together with a copy of a deed, lease, contract, or other proof of the right to use the space as a vehicle storage lot, and a copy of a valid Certificate of Occupancy permit for that use and location;
- (g) Proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000, which remains in effect or is renewable for the duration of the licensure period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written;
- (h) A bond in the minimum amount of \$100,000 and
- (i) A copy of the billing form that the towing business proposes to use, which reflects current rates for private tows and storage, trade name, business address and business phone number.

402.4

The towing service storage lot identified in accordance with §402.3 shall be located within the District of Columbia, except as provided herein.

- (a) A towing service storage lot may be located outside the District but within the Metropolitan area of Washington (limited to Montgomery and Prince George's Counties of Maryland, Arlington and Fairfax Counties of Virginia, and the City of Alexandria, Virginia) if the towing business owns or leases a place of business, at its primary location in the District of Columbia, at

which gasoline is dispensed from two (2) or more pumps open to the public and which is equipped for, and commonly recognized as, a gasoline service station, and provided that the applicant submits proof that they are authorized to conduct towing services and store vehicles in the outside jurisdiction.

- (b) If, under §402.3, the applicant files with the Director a description of a towing service storage lot outside of the District in accordance with §402.4(a), the applicant shall set forth the exact location of the lot and shall also file a certificate and agreement in which the applicant certifies and agrees to the following:
- (1) That no charge shall be made to the owner or operator of a vehicle towed to that lot in excess of the amount of towing charge to the address in the District shown on the applicant's license;
 - (2) That the applicant will, on demand to any adult in charge of, or employed at the applicant's place of business within the District, without charge to the owner or operator of a towed vehicle or to any official of the District, return the vehicle to that place of business in the District within one hour; and
 - (3) That, upon request of any authorized government agency, the applicant will grant access to any towing service storage lot in or outside the District for the purpose of inspection and photographing of any vehicle removed to that lot.
- (c) Any discontinuance of the availability of the towing service storage lot to the licensee during the license period shall be reported in writing to the Director at least ten (10) days prior to the expiration of the availability.
- (d) The towing business's license shall be suspended during any period of unavailability of the towing service storage lot.
- (e) Any license suspended under §402.4(d) may be reactivated without charge for the remainder of the license period when written evidence of availability to the applicant of a substitute towing service storage lot is supplied to the Director.

402.5 Each person or entity making application for a Master Business License Endorsement for a Towing Service Storage Lot shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:

- (a) The trade name, primary location of business, and primary phone number of the towing service storage lot;

- (b) A list of all other locations from which the towing service storage lot will operate, and the phone numbers for such locations;
- (c) The name, address, and telephone number of each person or entity with an ownership interest in the towing service storage lot;
- (d) The location and description of the space to be used for the storage of towed vehicles, together with a copy of a deed, lease, contract, or other proof of the right to use the space as a vehicle storage lot, and a copy of a valid Certificate of Occupancy permit for that use and location;
- (e) Proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00, which remains in effect or is renewable for the duration of the licensure period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written; and
- (f) A copy of the billing form that the towing business proposes to use, which reflects current rates for private tows and storage services, trade name, business address and business phone number.

- 402.6 Every applicant for a Master Business License or Master Business License Endorsement must submit with the application a certificate of compliance with the Clean Hands Before Receiving License or Permit Act of 1996, D.C. Official Code §47-2862 (2001).
- 402.7 Any changes (additions or deletions) to information provided in an application for a license or endorsement shall be provided to DCRA within fourteen (14) days of the date of the change in a manner specified by the Director.
- 402.8 All persons with financial interests in towing businesses or towing service storage lots shall be identified on the applications for licenses and endorsements under these regulations, and shall be subject to all provisions of this chapter and the Business and Professional Licensing Administration of the DCRA.
- 402.9 No person may operate a tow truck, or own or operate a towing business or towing service storage lot, who has been convicted within the preceding five (5) years of a misdemeanor or felony, the elements of which involve motor vehicle theft or fraud, including but not limited to; tampering with auto, attempted unauthorized use of a vehicle and taking property without right.
- 402.10 Before approving any application for a license or endorsement to own or operate a towing business or towing service storage lot, the Director is authorized to conduct any investigation which the Director deems necessary to determine the applicant's qualification to own or operate a towing business or towing service

storage lot without detriment to the public. The Director's investigation may include, but shall not be limited to, inquiries into driving and criminal records.

403 TOW TRUCK LICENSES

- 403.1 No person may operate or use any tow truck in a towing business unless such tow truck has been identified in the application (or amended application) for the Master Business License Endorsement for such towing business, and unless the Director has inspected, approved, and authorized issuance of a DCRA unique alphanumeric identifier for such tow truck.
- 403.2 Upon approval by the Director of an application, and the payment of the prescribed fees, the Director shall issue a license authorizing the operation of each tow truck identified or described in the application.
- 403.3 No tow truck may be licensed unless it bears a valid inspection sticker and valid registration issued by the District of Columbia Department of Motor Vehicles.
- 403.4 The license shall be affixed and prominently displayed on the tow truck, in a location specified by the Director.
- 403.5 In case of loss, mutilation, or destruction of a license, the Director may issue a duplicate upon proof of the fact of loss and payment of the prescribed fees. A police report shall constitute proof of such loss.

404 REQUIRED TOW TRUCK EQUIPMENT AND MARKINGS

- 404.1 A towing business shall have available for its exclusive use a minimum of one (1) fully equipped and licensed tow truck.
- 404.2 The trade name, primary location of business and primary phone number of the towing business shall appear on both doors of the cab of the tow truck in contrasting paint or vinyl lettering not less than 3" in height.
- 404.3 The minimum and maximum private towing and storage fees charged by the towing business shall appear on both sides of the tow truck in contrasting paint or vinyl lettering not less than 2" in height.
- 404.4 The unique alphanumeric identifier issued by DCRA to each tow truck shall appear on both sides of the tow truck in contrasting paint or vinyl lettering not less than 1" in height.
- 404.5 Each tow truck shall be equipped with a two-way communication system capable of transmitting and receiving messages between the towing business's office and

the tow truck anywhere in the District of Columbia. The towing business shall have all permits and licenses required by District of Columbia and Federal law to operate the communications system.

- 404.6 Each flat-bed tow truck shall have four (4) safety tie-down devices, chains, or straps in any combination. Chains used for light-duty tows (i.e., vehicles with a gross vehicle weight less than 4,000 pounds) shall be "grade 7" high-test chains, a minimum of 5/16" in diameter. Straps shall be 2" webbing with an 8,000 pound-per-linear-inch rating. Chains and straps shall be equipped with a "transportation cluster." Straps shall have a ratchet device.
- 404.7 If a tow truck is engaged in recovery, it shall have at least one (1) recovery chain of a minimum of "grade 8" alloy, which is a minimum of 5/16" in diameter. In addition, it shall have two (2) four-ton (manufacturer-stamped) snatch blocks with one 4" pulley equipped with locking devices.
- 404.8 Each crane tow truck shall have at least a retracted boom, rated at four-tons, with one four-ton winch equipped with a minimum of 75 feet of 3/8" wire rope. The cable must be able to support a load equal to or greater than the capacity of the winch. The boom must be able to support a load equal to or greater than the capacity of the winch or winches. Industry standards require a swage and thimble to be used when the wire rope is terminated with a fixed hook. A clip may only be used for an emergency repair. Each crane tow truck shall have dollies with securing devices.
- 404.9 Each wheel lift tow truck shall have a minimum capacity of 3500 pounds. This standard applies whether wheel lift is on a stand-alone towing vehicle or is in combination with a crane tow truck or flat bed tow truck. In addition, each wheel lift tow truck shall have straps which have 2" webbing with an 8,000 pound-per-linear-inch rating. Chains and straps shall be equipped with a "transportation cluster." Straps shall have a ratchet device.
- 404.10 All tow trucks shall at all times have the following equipment, in good working order:
- (a) One (1) all-purpose 5-pound fire extinguisher (rated 5ABC or better);
 - (b) One (1) set of wheel blocks;
 - (c) A minimum of two (2) gallons of commercial absorbent to be used as a quick cover up for minor oil/gasoline spills;
 - (d) An air compressor and/or portable air tank equipped with hose and tire chuck for tire inflation;
 - (e) A minimum of two (2) red flags not less than 12" x 12" in size;

- (f) Two (2) portable red reflectors and two (2) red flares;
- (g) A complete set of standard trade tools (e.g., hammers, screwdrivers, wrecking bar, and other related tools); and
- (h) At least one (1) of each of the following: broom, shovel, waste container, and axe.

404.11 It shall be unlawful for a tow truck operator to tow a vehicle without properly using equipment that meets the manufacturer's minimum specifications for the towing of a specified vehicle.

405 TOWING SERVICE STORAGE LOT REQUIREMENTS

405.1 A towing service storage lot shall be located on a secured lot, with appropriate and descriptive signage, and be in full compliance with all District of Columbia laws, regulations, and zoning rules.

405.2 The towing service storage lot operator shall maintain a log of all vehicles towed to and from its location. The operator shall maintain the log and make it available for inspection as follows:

- (a) It shall be available to DCRA investigators and other authorized government officials whenever the lot is open for business and at other reasonable times during regular business hours;
- (b) It shall record the receipt and release of every vehicle towed to or from the lot, and for each vehicle shall include identification of the towing business responsible for the tow, the vehicle identification number (VIN), the make, model, year, color, license state, and tag number of the stored vehicle, the owner of the vehicle (if known), and, if a public tow, shall include the Department of Public Works (DPW) towing control number;
- (c) It shall also record the date and time the vehicle arrived at the towing service storage lot, a description of any damage to the vehicle upon its arrival, the date and time of removal from the lot, a description of any damage to the vehicle upon its removal, and the person or entity to whom the vehicle was released; and
- (d) It shall be maintained and available for inspection for three (3) years after the date of the last entry.

405.3 When an authorized government official directs the towing of a vehicle to a towing service storage lot, the government shall notify the vehicle owner of

record, in accordance with DPW procedures, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.

- 405.4 Any towing service storage lot used by more than one towing business shall clearly identify or designate the towing business responsible for each towed vehicle.
- 405.5 The owner/operator of a towing service storage lot shall employ reasonable procedures and requirements to insure that vehicles are released to rightful owners or other authorized individuals.
- 405.6 A printed "Owner's Bill of Rights" statement, issued by the Director, shall be given to the vehicle owner or operator by the tow truck operator before initiating the tow, if either is on the scene of the tow. The Owner's Bill of Rights statement shall also be conspicuously posted at each towing service storage lot, and upon release of the vehicle a copy shall be provided to the person to whom the vehicle is released.

406 PUBLIC TOWS

- 406.1 All public tows will be requested by government officials through DPW in accordance with its published central tow ordering and dispatching procedures. Any towing business to be used by the District government to conduct public tows must be licensed in accordance with these regulations, and must agree to the rules established by DPW under its central tow ordering and dispatching procedures.
- 406.2 When a public tow is required, the owner of the vehicle shall be responsible for all charges associated with towing and storing the vehicle, except as may otherwise be provided in this chapter.
- 406.3 No public tow shall be conducted in the District of Columbia until DPW has issued a towing control number for that tow, except in the case of an emergency as set forth in §406.5. After receiving a towing control number from DPW, the tow truck operator shall place the towing control number on the vehicle to be towed in a manner prescribed by DPW. The towing control number shall be used on all documents related to the tow.
- 406.4 Before initiating a public tow from private real property, or a public tow at the direction of a government entity, a towing business shall provide the following information to DPW, in a manner prescribed by DPW:
- (a) The name of the tow truck operator, the name of the towing business and the crane number;

- (b) The make, model, year, color, license state, and tag number of the vehicle to be towed;
- (c) The VIN of the vehicle to be towed;
- (d) The name, address, and phone number of the person requesting the tow, and the governmental authority of the person requesting the tow (*e.g.*, police officer, parking enforcement official, etc.) if the tow is requested by a government entity;
- (e) The reason for towing the vehicle, including the ticket number and violation cited by the governmental authority, if any;
- (f) The current location of the vehicle;
- (g) The nature and location of any damage to the vehicle; and
- (h) The address of the place where the vehicle will be towed.
- (i) The address, in the District of Columbia, where the vehicle can be reclaimed.

- 406.5 In an emergency, a police officer may direct a tow truck operator to tow a vehicle before the towing business provides all of the information required by §406.4. In those instances, the information required by §406.4 shall be furnished and a towing control number obtained as soon thereafter as practicable, but in no event more than two (2) hours after the vehicle has been towed.
- 406.6 When a vehicle is involved in an accident, a public tow of the vehicle shall be ordered if necessary in the judgment of the governmental authority at the scene of the accident.
- 406.7 No vehicle may be towed from private real property, without the consent of the owner of the vehicle, unless that vehicle has been issued a citation by a police officer or parking enforcement official, or at the direction of a police officer in an emergency. Under such circumstances, the owner of the vehicle shall be responsible for all charges associated with towing and storing the vehicle. All public tows from private real property shall be conducted in compliance with the provisions of D.C. Official Code §§50-2621 through 50-2624 (2001), which govern the disposition of vehicles left on private property in the District of Columbia.
- 406.8 Any loss or damage sustained by a vehicle as the result of a public tow by a towing business shall be the sole and entire responsibility of the towing business and not the Government of the District of Columbia, any department or agency

thereof, or any government official who requested the tow. The towing business shall assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorized representative. The towing business shall take all precautions necessary to protect persons or property against injury or damage, and shall provide sufficiently trained personnel to perform in accordance with towing industry standards.

406.9 Operators of storage lots shall notify DPW, in a manner determined by the Director, in consultation with the DPW Director, when releasing a public tow vehicle.

406.10 When a vehicle is towed as a public tow, the government shall notify the vehicle owner of record, in a manner prescribed by DPW, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.

407 PRIVATE TOWS

407.1 A private tow shall not be subject to the requirements of §406, but shall be subject to all other sections of these regulations.

407.2 Before a towing business may undertake the private tow of a vehicle in the District of Columbia, the towing business must obtain written consent for the tow from the owner, lien holder, owner's agent, or operator of the vehicle.

408 PAYMENT FOR SERVICES

408.1 The Director, in consultation with the DPW Director, shall establish maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows, unless otherwise provided by law.

408.2 No rates charged by a towing business for private tows may exceed the rates set forth in the towing business's Master Business License Endorsement application (including amendments thereto).

408.3 No extra charges may be made for the use of cranes, winches, dollies, or other services necessary or incidental to a public tow, or for the restoration or cleaning of an accident site, unless approved in writing by the Director, upon submission of documentary evidence of extraordinary circumstances.

408.4 No storage charges shall accrue for any day on which the facility is not open to the public for the reclaiming of vehicles.

- 408.5 If a tow truck responds to a dispatch, and the police officer or other official who requested the public tow determines that services are no longer required, no charge shall be made by the towing business or service, except as may be authorized by a contract with a government agency. If a towing control number has been issued, the towing business shall notify DPW that the tow has been discontinued.
- 408.6 If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, upon concurrence by the police officer or other official who requested the tow the tow truck operator shall comply, upon payment by the vehicle owner or operator of the rates established for a discontinued public tow. If a towing control number has been issued, the towing business shall promptly notify DPW that the tow has been discontinued.
- 408.7 Unless a towing service storage lot has been notified by a governmental official that a stored vehicle is to be held for evidentiary or other legally permissible purposes, the towing service storage lot shall promptly release the vehicle to the owner or the owner's agent when presented with proof of personal identity and ownership or authorization to reclaim the vehicle, and upon payment of all towing and storage charges due.
- 408.8 Towing businesses and towing services storage lots must accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, or nationally-recognized credit cards.
- 408.9 The owner or operator of the towing service storage lot shall provide to the person to whom the vehicle is released; the written notice of infraction, the towing control number, or other legal authority for removal of the car, an itemized statement of the charges due, a receipt for all monies paid, and a copy of the Owner's Bill of Rights.
- 408.10 No repair work shall be done on any vehicle ordered moved by a government official unless the owner of the vehicle or the owner's authorized agent specifically authorizes repair work in writing.
- 408.11 Written authorization for repair work to any vehicle ordered moved by a government official shall be made on a separate form which clearly indicates that the form authorizes repair work. The form shall not contain any text in a font size smaller than 10 points.
- 409 ITEMIZED STATEMENTS AND RECEIPTS**
- 409.1 Before commencing a private tow, the tow truck operator shall furnish to the owner or operator of the vehicle to be towed a signed and itemized estimate of

charges for the tow and other services to be rendered, on a form approved by the Director. The owner or operator of the vehicle shall sign the form before commencement of the tow.

- 409.2 Each itemized estimate of charges, as prescribed in §409.1, shall contain the following:
- (a) The location from which and to which the vehicle is to be towed;
 - (b) The name and address of the towing business and the name of the tow truck operator;
 - (c) If available, the name and address of the owner or operator of the vehicle to be towed;
 - (d) A brief description of the vehicle to be towed;
 - (e) The license plate number and state of registration of the vehicle to be towed;
 - (f) An itemized estimate of fees to be charged for towing services;
 - (g) The maximum rate charged per 24 hour period or part thereof, for the storage of the towed vehicle, and a statement that the 24 hour period shall start when the vehicle enters the towing service storage lot; and
 - (h) The location of the towing service storage lot or repair facility to which the vehicle will be towed.
- 409.3 After rendering the towing and related services, the tow truck operator shall enter upon the itemized statement the actual amount paid for services rendered, and shall sign the statement to acknowledge receipt of payment.
- 409.4 A copy of each statement and receipt submitted by a tow truck operator in accordance with the requirements of this section shall be retained by the towing business for three (3) years from the date of issuance, and shall be exhibited upon demand to the Chief of Police or the Director or their agents.
- 409.5 The direction to tow by an authorized official, in accordance with any section of these regulations, shall not constitute an agreement on his/her behalf, or on behalf of the agency for which he/she works, to pay any charges in connection with the tow, but shall constitute only an authorization to remove the motor vehicle.
- 409.6 Except as provided by §408.8, the owner of a towed vehicle shall be responsible for paying all charges for a public tow, and all related towing services charges, in an amount not to exceed the charges authorized by the Director pursuant to §408.1.

- 409.7 Payment of all lawful towing and storage charges shall be made by the owner of the vehicle, an agent of the owner, or the insurer of the vehicle before the vehicle is released by the towing business, the tow truck operator, or towing service storage lot.

410 PROHIBITED ACTS

- 410.1 It shall be unlawful for any person or entity to offer, solicit, or engage in the towing business or to operate a towing service storage lot without holding a valid, current license or endorsement required by these regulations.
- 410.2 It shall be unlawful for any person or entity conducting a towing business, or for any person acting on his/her behalf, to represent falsely, either expressly or by implication, that the towing business represents, or is approved by, any private organization which provides emergency road service for disabled motor vehicles.
- 410.3 In any accident case requiring a report to the police, it shall be unlawful for a tow truck operator to move a vehicle involved in that accident from the position in which the vehicle came to rest after the accident until authorized to do so by a police officer, except in life threatening situations, or to the extent necessary to free person(s) who may be trapped in or by the vehicle.
- 410.4 It shall be unlawful for any person or entity conducting a towing business, or any agent for such person or entity, to require an owner/operator of a motor vehicle involved in an accident or breakdown, to sign an agreement for repair work as a condition to providing towing service for the vehicle.
- 410.5 It shall be unlawful for a tow truck operator to use any public space for the accommodation of a vehicle removed from the scene of an accident or breakdown, except as the use of that public space may be directed by a police officer.
- 410.6 It shall be unlawful for any person or entity conducting a towing business, and for any person acting on his/her behalf, to charge more than one (1) towing fee when the owner/operator of a disabled vehicle requests transport of the vehicle to a repair facility owned or operated by the person or entity conducting the tow.
- 410.7 Tow truck operators shall not tow vehicles to a repair facility unless the owner or the owner's designated representative gives written consent before removal of the vehicle.
- 410.8 It shall be unlawful for any towing business owner or tow truck operator, and any person acting on his/her behalf, to install or maintain in a tow truck or in any other place, a radio receiver capable of being tuned to the MPD radio frequencies.

- 410.9 It shall be unlawful for any tow truck operator to stop at the scene of any accident and furnish any towing service, unless he or she has been called to the scene by the owner/operator of a disabled vehicle or authorized by DPW to provide such service at that accident scene.
- 410.10 It shall be unlawful for a tow truck operator to deposit upon public space a vehicle that is inoperable or in a state of disrepair, except temporarily and for emergency purposes at the direction of a police officer or other authorized official. It shall also be unlawful for a tow truck operator to deposit such vehicles upon private property except with the express permission of the owner of such property.
- 410.11 No towing service provider may refuse to provide to the owner or owner's agent, an itemized receipt for all lawful charges made in connection with the towing and storage of a vehicle.
- 410.12 It shall be unlawful for towing service providers to charge more for public tows than is permitted by the Director.
- 410.13 Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle.
- 410.14 No person shall refuse to surrender to DCRA upon lawful demand, any license or endorsement that has been suspended, revoked, or canceled.
- 410.15 Failure to notify the DPW and obtain a towing control number before initiating a public tow in the District of Columbia shall be a violation of these regulations, except as provided in §406.5.
- 410.16 No towing service provider shall permit any unlawful use of a towing license or endorsement. Any act or omission by a person acting on behalf of a licensed or endorsed towing business, tow truck operator, or towing service storage lot, may be considered the act or omission of the licensed or endorsed person or entity, which act or omission, if in violation of this chapter, shall be cause for denial, suspension or revocation of a license or endorsement.
- 410.17 It shall be unlawful for any tow truck operator to tow any type of vehicle in an unsafe manner according to industry standards. In addition, it shall be unlawful for any tow company to utilize any tow truck or equipment that is unsafe according to industry standards.

411 PENALTIES AND ENFORCEMENT

- 411.1 DCRA shall be responsible for the enforcement of regulations regarding towing businesses and towing service storage lots. Authorized officials of other government agencies may conduct inspections and issue citations for violations or refer them to DCRA for fines, suspension, or revocation of a license or endorsement.
- 411.2 Any person who believes that a violation of these regulations, or the laws of the District of Columbia on which they are based, has occurred, may file a complaint with the Director, who shall investigate the complaint and take appropriate action.
- 411.3 The Director may summon the owner of a towing business, a tow truck operator, or the owner of a towing service storage lot to appear before an administrative tribunal to respond to alleged violations of the provisions of this chapter.
- 411.4 A license or endorsement issued under these regulations may be suspended or revoked by the Director for any of the following reasons:
- (a) The application for the license or endorsement contained a false statement of a material fact, or failed to reveal a material fact which, if disclosed at the time the application for the license was filed, would have constituted just cause for denial of the application;
 - (b) Failure of the licensee to comply with the provisions of this chapter;
 - (c) Any charges for towing service or storage for public tows made in excess of the charges set forth by the Director;
 - (d) Failure of the licensee to comply with the provisions of the General License Law, D.C. Official Code §47-2851.01 (2001), *et seq.*;
 - (e) Engaging in, or holding oneself out as engaging in, towing services or the operation of a towing service storage lot without having current and valid licenses or endorsements, or without having the equipment, insurance, and available storage facilities required by this chapter;
 - (f) Violation of the traffic laws or regulations of the District of Columbia;
 - (g) Failure to maintain qualifications and insurance required by this chapter;
 - (h) Failure to compensate vehicle owners for damage to their vehicles caused by, or due to the negligence of, the operators of a tow truck or towing service storage lot, and failure to reasonably secure and protect a towed vehicle and property therein; or

- (i) Failure to pay fees, taxes, fines or other monetary obligations to the Government of the District of Columbia or the Government of the United States.

- 411.5 Any entity whose towing business or towing service storage lot license and endorsement has been revoked shall not be eligible to make application for a new towing business or towing service storage lot license and endorsement for a period of one (1) year from the date of revocation.
- 411.6 Any person or entity adversely affected by the denial, revocation, or suspension of a tow truck license, towing business or towing service storage lot license and endorsement, or who has been fined or otherwise disciplined in accordance with the provisions of this chapter, may file an appeal in writing with the Board of Appeals and Review of the District of Columbia or its successor.
- 411.7 In addition to any other penalty prescribed by law, any violation of this chapter shall be grounds for revocation or suspension of the license issued under this chapter, either before or after conviction.
- 411.8 A towing business or tow truck operator who performs towing services, and any person or entity who operates a towing service storage lot, without a license or endorsement, or with a license that has been revoked or is currently suspended, may be subject to arrest, fine and imprisonment.
- 411.9 Tow truck operators shall be responsible for removing all accident debris from the roadway before towing any vehicle involved in a collision. Failure to do so shall be grounds for disciplinary action, including suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.10 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of these regulations.
- 411.11 Adjudication of any civil infraction shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §2-1801.01, *et seq.* (2001).

412-498 [RESERVED]

499 DEFINITIONS

- 499.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Authorized Government Official- A District government official authorized by law, regulation or Mayor's order to conduct inspections and/or enforcement actions consistent with this chapter.

Crane service – a form of towing service which involves moving vehicles by the use of a wheel-lift device, such as a lift, crane, hoist, winch, cradle, jack, automobile ambulance, tow dolly, or any other similar device.

Director – the Director of the Department of Consumer and Regulatory Affairs (hereinafter DCRA) of the District of Columbia, or his/her designated agent.

Flat-bed service – a form of towing service which involves moving vehicles by loading them onto a flat-bed or roll-back platform instead of using a crane or winch to tow a vehicle.

Master Business License – the single document designed for public display issued by the business license center that certifies District agency license approval and incorporates the endorsements for individual licenses included in the master business license system.

Master Business License Endorsement for a Towing Business – the individual license endorsement required for the conducting of a towing business in the District of Columbia.

Master Business License Endorsement for a Towing Service Storage Lot - the individual license endorsement required for the maintenance of a towing service storage lot in the District of Columbia.

Owner – the person or entity to whom a vehicle is registered, or to whom it is leased, if the terms of the lease require the lessee to maintain and repair the vehicle. The holder of a contract with a vehicle rental agency shall not be considered the owner of that vehicle.

Police officer – a sworn or reserve officer of the Metropolitan Police Department or any other law enforcement agency with authority to make arrests within, and enforce the laws of, the District of Columbia.

Private tow – the towing of a vehicle at the request of the owner or the authorized agent of the owner.

Public tow – the towing of a vehicle, other than a vehicle owned or controlled by a government entity, at the direction or arrangement of a government entity or, without the consent of the owner or operator of the vehicle, including relocations, repossessions and tows from private real property.

Relocation – the public tow of a vehicle because it is illegally parked, or for some exigent circumstance that necessitates its removal to a nearby location, but not to a towing service storage lot.

Towing business – any person or entity that provides, or offers to provide, towing services.

Towing control number – a unique number issued by the Department of Public Works to identify and track a vehicle towed in the District of Columbia.

Towing service – any service that involves towing or otherwise moving motor vehicles by means of a tow truck.

Towing service storage lot – a property used to deposit and store vehicles that have been towed.

Tow truck – a motor vehicle equipped to provide either crane or flat-bed towing service.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 48 of Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR). The purpose of the amendments is to clarify and update chiropractic practice to better comply with the requirements of the Health Occupations Revision Act. Notice of Proposed Rulemaking was published in the D.C. Register on April 11, 2003 at 50 DCR 2869. No comments were received concerning these rules and no changes have been made since publication as a Notice of Proposed Rulemaking. These final rules will be effective upon publication of this notice in the D.C. Register.

Chapter 48 (Chiropractic) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

4800 GENERAL PROVISIONS

Section 4800.3 is amended to read as follows:

4800.3 Notwithstanding anything in chapter 40 to the contrary, the Board shall accept applications for licensure by one of the following means:

- (a) Examination;
- (b) Reactivation of an inactive license;
- (c) Reinstatement of an expired, suspended, or revoked license; or
- (d) Reciprocity pursuant to § 4014.

Section 4802.1(b)(3) is amended to read as follows:

- (3) Is accredited at the time of the applicant's graduation by:
 - (A) The Council on Chiropractic Education (CCE); or
 - (B) The Straight Chiropractic Academic Standards Association (SCASA); or
 - (C) Any other specialized chiropractic accrediting agency listed with the U.S. Department of Education.

Section 4805.3 is amended to read as follows:

4805.3 The District examination may include questions on the following:

- (a) The District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99, D.C. Official Code § 3-1201.01 (2001);
- (b) This chapter; and
- (c) Title 17 chapters 40 and 41 of the DCMR.

Section 4807.1 is amended to read as follows:

4807.1 The Board shall accept for credit continuing education programs provided or sponsored by the following:

- (a) A college of chiropractic accredited by the CCE or SCASA;
- (b) The America Chiropractic Association;
- (c) The Federation of Straight Chiropractic Organizations;
- (d) The International Chiropractors Association; or
- (e) Approved by the District of Columbia Board of Chiropractic.

Section 4811.1 is amended to read as follows:

4811.1 A chiropractor who is licensed to practice in the District of Columbia under the provisions of this chapter may provide the following chiropractic services:

- (a) Locating, diagnosing, and analyzing subluxated vertebrae as follows:
 - (1) By x-ray of the spinal column;
 - (2) By physical examination; and
 - (3) By employing other non-invasive procedures such as MRI and CAT scan;
- (b) Correcting vertebral subluxation displacement by applying specific localized force to the spine;
- (c) Advising patients about diet, exercise and stress;

- (d) Referring patients for specialized diagnostic testing, which may be necessary for chiropractic treatment or patient safety;
- (e) Referring patients to other healthcare practitioners as deemed necessary by the chiropractor; and
- (f) Diagnosing and treating bodily articulations by means of manipulation or adjustments.

Section 4811.2 is amended to read as follows:

4811.2 A chiropractor who is certified by the Board to perform ancillary procedures pursuant to § 4811.3 may perform any physiotherapy for which the chiropractor has received specialized training at a program or institution listed in § 4807.1.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 6 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of the following two new chapters, Chapter 50 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medicaid Reimbursement for Personal Care Services" and Chapter 51 of Title 29 DCMR entitled "Medicaid Reimbursement for Services Provided by Home Health Aides". These rules establish standards governing reimbursement of personal care and home health aide services by the District of Columbia Medicaid Program (Medicaid Program).

The Medicaid Program has also made the following three changes to the District of Columbia State Plan for Medical Assistance (State Plan): (1) the elimination of the in-home requirement for recipients of personal care services; (2) an increase in the number of hours per day that personal care services are available; and (3) an increase in the amount of reimbursement to provider agencies for services provided by personal care aides and home health aides. The Medicaid Program estimates an increase in expenditures of approximately \$2.2 million dollars in Fiscal Year 2002 as a result these changes.

The federal rules governing Medicaid reimbursement of personal care services were amended to remove the in-home requirement. The revised federal rules require that personal care services be available under the State Plan seven days a week, within the home and outside of the home, in a manner that supports the competitive employment of disabled working individuals. To ensure compliance with the federal requirements, the Medicaid Program is amending the standards to eliminate the in-home requirement.

Currently, reimbursement for personal care services is limited to four hours per day and one thousand and forty hours (1,040) per year in any twelve month period, unless prior authorization is given. Limiting the program to four hours per day hampers the ability of the program to be a cost effective alternative to institutional care. Thus, the Medicaid Program is increasing the number of hours personal care services are available from four hours per day to eight hours per day.

These rules also increase the hourly reimbursement rate paid to personal care aides and home health aides by \$2.00 per hour. Providers have indicated that the current hourly rate is insufficient to recruit qualified workers. Federal rules require that the agency rates must be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population. An increase of \$2.00 per hour would make the rates comparable to the hourly rate paid by surrounding jurisdictions and would ensure access to services.

A notice of proposed rulemaking was published in the *D.C. Register* on January 11, 2002 (49 DCR 264). No comments were received. No substantive change has been made. Section 5004.3 has been amended to clarify that family member includes any legally responsible relative. The corresponding State Plan amendment has been approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new Chapters 50 (Medicaid Reimbursement for Personal Care Services) and 51 (Medicaid Reimbursement for Services Provided by Home Health Aides) to read as follows:

CHAPTER 50 MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES

5000 GENERAL PROVISIONS

- 5000.1 These rules establish the standards and conditions of participation for providers of personal care services ("Provider") under the District of Columbia Medicaid Program ("Medicaid Program").
- 5000.2 The provisions shall be in support and furtherance of the following goals:
- (a) To provide necessary hands-on personal care assistance with the activities of daily living in order to maintain a patient in the home in a clean, sanitary and safe condition; and
 - (b) To encourage home-based care as a preferred and cost-effective alternative to institutional care.
- 5000.3 A home care agency seeking reimbursement for personal care services shall meet the conditions of participation for home health agencies set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR 484, and shall comply with the requirements set forth in the Health-Care and Community Residence Facility Act, Hospice and Home-Care Licensure Act of 1983, effective Feb. 24, 1984 (D.C. Law 5-48; D.C. Official Code, § 44-501 et seq), and implementing rules.
- 5000.4 An entity seeking to participate as a personal care services provider under the Medicaid Program shall file an application on forms provided by the Department of Health, Medical Assistance Program (MAA).
- 5000.5 The Provider application shall contain, but not be limited to, the following information:

- (a) Name and address of the Provider organization and location of all of the Provider's places of business in the District of Columbia and elsewhere in the United States;
- (b) Names and addresses of the owners of the Provider organization;
- (c) If the Provider organization is a corporation, the application shall include the names and addresses of all persons having a five percent (5%) or greater ownership interest and the names and addresses of all officers and directors of the organization; and
- (d) The names and license numbers of the registered nurses who are responsible for supervising the personal care aides.

5000.6 A Provider may contract with a personnel staffing agency for staff to perform personal care services. Agreements between the Provider and a contractor for the provision of personal care services shall be in writing and shall include at a minimum, the following requirements:

- (a) A description of the services to be provided;
- (b) Location of where the services are to be provided;
- (c) The manner in which the services are controlled, coordinated and evaluated by the home care agency;
- (d) The procedure for developing plans of care, submitting clinical and progress notes, scheduling of visits, preparing patient evaluations and other designated reports;
- (e) The procedures used for managing and monitoring the work of personnel employed on a contractual basis;
- (f) The procedure for payment for services and payment terms for services furnished;
- (g) The duration of the agreement, including provisions for renewal, if applicable; and
- (h) Assurances that the contractor will comply with:
 - (1) All applicable agency policies, including the assurance that contract personnel meet the qualifications and fulfill the responsibilities of agency employees in accordance with these rules;

- (2) All insurance and bonding requirements as set forth in section 5001 of these rules; and
- (3) All applicable federal and District laws and rules.

- 5000.7 A Provider must be certified by MAA as being in compliance with all requirements set forth in this chapter before participating in this program.
- 5000.8 Each Provider shall enter into an agreement with MAA that specifies the services to be provided, methods of operation, and financial and legal requirements.
- 5000.9 Each Provider shall satisfy the requirements set forth in Title VI of the Civil Rights Law of 1964, including Section 504, which prohibits discrimination against the handicapped and comply with all applicable federal and District laws and rules.

5001 INSURANCE

- 5001.1 Each Provider shall maintain the following minimum amounts of insurance coverage:
- (a) Blanket malpractice insurance for all employees in the amount of at least one million dollars (\$1,000,000) per incident:
 - (b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars (\$1,000,000) per occurrence: and
 - (c) Product liability insurance, when applicable.

5002 ADMINISTRATION AND STAFFING

- 5002.1 Each Provider shall have a current organizational chart that clearly describes the organizational structure, staff responsibilities and lines of authority.
- 5002.2 Each Provider shall provide to all staff and subcontractors a current policy manual which sets forth all of its policies and procedures.
- 5002.3 Each policy manual shall include, but not be limited to, the following information:
- (a) A description of the services to be provided;
 - (b) Procedures for patient care;

- (c) The reimbursement methodology or fee schedules;
- (d) Operational schedules;
- (e) Quality assurance standards;
- (f) A statement of patient rights and responsibilities;
- (g) Financial and record-keeping requirements;
- (h) Procedures for emergency care, infection control and reporting of unusual incidents;
- (i) A description of staff and personnel policies, which shall be reviewed by designated Provider staff annually, revised as necessary and dated at time of review;
- (j) A description of each staff position and procedures for employee hiring, evaluations, grievances and in-service training; and
- (k) An up-to-date listing of professional staff licensure and registration information.

5002.4 Each Provider shall be staffed with individuals who are qualified to perform the following functions:

- (a) Verify and document each patient's Medicaid eligibility;
- (b) Provide quality services in accordance with the plan of care, including the proper assignment and supervision of personal care aides; and
- (c) Coordinate the provision of personal care services with home health services, as appropriate.

5002.5 Each Provider shall employ a registered nurse who is responsible for the following:

- (a) Performing the initial evaluation of the patient and regularly reevaluating the patient's needs;
- (b) Monitoring the quality of the personal care services on a regular basis;
- (c) Supervising the personal care aides which shall include on-site supervision at a minimum of at least once every 62 days;

- (d) Developing and reviewing the plan of care and preparing clinical and progress notes;
 - (e) Coordinating services and informing the physician and others involved in patient care of changes in the patient's condition and needs;
 - (f) Gathering information regarding the patient's condition and the need for continued care; and
 - (g) Counseling the patient and the family regarding meeting nursing and related needs.
- 5002.6 The registered nurse shall visit each patient within 48 hours of initiating personal care services to monitor the quality of services and no less than every 62 days thereafter, for assessment and evaluation of the patient and update of the plan of care.
- 5002.7 The registered nurse may provide an additional supervisory visit to each patient if the situation warrants an additional visit, such as the assignment of a new personal care aide or change in the patient's health status.
- 5002.8 Each Provider shall discontinue personal care services when such services are no longer required or have been determined inadequate to meet a patient's needs.
- 5002.9 Each Provider shall notify MAA and the patient or patient's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. The seven (7) day written notice shall not be required, and oral notice may be given, if the discharge or referral is the result of:
- (a) A medical emergency;
 - (b) A physician's order to admit the patient to an inpatient facility;
 - (c) A determination by the home care agency that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
 - (d) A determination by a physician that the condition that necessitated the provision of services no longer exists.
- 5002.10 If the patient seeks to change providers, the Provider shall assist the patient in selecting a new provider and cannot abandon the patient until the transfer has been successfully completed.
- 5002.11 Each Provider shall immediately terminate the services of a personal care aide and instruct the personal care aide to discontinue all services to the patient, in any case

where the Provider believes that the patient's physical or mental well-being is endangered by the care or lack of care, provided by the aide or that the patient's property is at risk.

5002.12 Each Provider shall conduct a performance evaluation of each personal care aide after the first three (3) months of employment and annually thereafter.

5002.13 Each Provider shall develop contingency staffing plans to provide coverage for each patient in the event the assigned personal care aide cannot provide the services or is terminated.

5003 PERSONAL CARE AIDES (PCA)

5003.1 Each PCA shall be supervised by a registered nurse.

5003.2 Each PCA shall meet the following qualifications:

- (e) Be at least 18 years of age;
- (f) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
- (g) Complete a home health aide training program that includes at least seventy-five (75) hours of classroom training with at least sixteen (16) hours devoted to supervised practical training and pass a competency evaluation for those services which the PCA is required to perform consistent with the requirements set forth in 42 CFR 484.36;
- (h) Be certified in cardiopulmonary resuscitation ("CPR") and thereafter obtain CPR certification annually;
- (i) Be able to read and write the English language at the fifth (5th) grade level and carry out instructions and directions;
- (j) Be able to recognize an emergency and be knowledgeable about emergency procedures;
- (k) Be knowledgeable about infection control procedures;
- (l) Be acceptable to the patient;
- (m) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;

- (n) Pass a criminal background check pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code, §44-551 et seq.); and
- (o) Provide documentation of acceptance or declination of the Hepatitis vaccine.

5003.3 After the first year of service, each PCA shall complete at least twelve hours of continuing education or in-service training annually. The in-service training may be furnished while the PCA is furnishing care to the patient under the supervision of a registered nurse.

5004 PROGRAM SERVICES

5004.1 Personal care services shall be prescribed by a physician or advanced practice registered nurse in accordance with the patient's plan of treatment.

5004.2 Personal care services shall be initiated no later than 48 hours after completion of the initial assessment unless the patient or the patient's representative agree to a later date to begin the services.

5004.3 A family member other than a spouse, parent of a minor recipient or any other legally responsible relative may provide personal care services. Each family member providing personal care services shall meet the requirements set forth in section 5003 of these rules.

5004.4 Personal care services include, but are not limited to, the following:

- (a) Basic personal care including bathing, grooming and assistance with toileting, or bed pan use;
- (b) Changing urinary drainage bags;
- (c) Assisting patients with range of motion exercises;
- (d) Assisting patients with self-administered medications;
- (e) Reading and recording temperature, pulse, and respiration;
- (f) Observing and documenting the patient's status and reporting all services provided;
- (g) Meal preparation in accordance with dietary guidelines and assistance with eating;

- (h) Tasks related to keeping the patient's living areas in a condition that promotes the patient's health and comfort;
- (i) Accompanying the patient to medically-related appointments or place of employment;
- (j) Providing assistance at the patient's place of employment;
- (k) Shopping for items related to promoting the patient's nutritional status and other health needs;
- (l) Recording and reporting to the supervisory health professional, changes in the patient's physical condition, behavior or appearance;
- (m) Infection control; and
- (n) Accompanying the patient to approved recreational activities.

5004.5 Personal care services shall not include services that require the skills of a licensed professional, such as catheter insertion, procedures requiring the use of sterile techniques and administration of medication.

5004.6 Personal care services shall not include tasks usually performed by chore workers, such as cleaning of areas not occupied by the patient, laundry for family members and shopping for items not used by the patient.

5004.7 Personal care services may be provided in the patient's place of residence or other location such as the patient's place of employment or assistance while in transit and shall be made available seven (7) days per week.

5004.8 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility for the mentally retarded or institution for mental disease.

5005 ELIGIBILITY REQUIREMENTS

5005.1 A Medicaid recipient who meets the following qualifications is eligible to receive personal care services:

- (a) The Medicaid recipient has received an initial assessment in which the recipient is determined to have functional limitations in one or more activities of daily living for which personal care services are needed; and
- (b) The physician or nurse, after evaluation of the Medicaid recipient, has an

expectation that the medical, nursing and social needs can be safely, adequately and appropriately met in the recipient's home or other location.

5006 PLAN OF CARE

- 5006.1 Each Provider shall conduct an initial assessment of the patient's functional status and needs within forty-eight (48) hours of receiving the referral for services.
- 5006.2 Each Provider shall develop a written plan of care within seventy-two (72) hours of the initial evaluation of the patient based upon an assessment of the patient's functional limitations.
- 5006.3 The plan of care shall specify the frequency, duration and expected outcome of the services rendered.
- 5006.4 The plan of care shall be approved by the patient's physician or advanced practice registered nurse and re-certified no less than every six (6) months after the initial certification and each re-certification thereafter.
- 5006.5 The plan of care shall be re-certified by the physician or advanced practice registered nurse after any interruption of service, including hospital admissions, greater than fourteen (14) days.
- 5006.6 The plan of care shall be reviewed by the registered nurse no later than once every sixty-two (62) days, updated or modified as needed and signed by the physician within thirty (30) days of prescription. If a plan of care is revised by telephone order, the telephone order shall be immediately reduced to writing and signed by the physician within thirty (30) days of its prescription.

5007 RECORDS

- 5007.1 Each Provider shall maintain accurate records reflecting past and current findings, the initial and subsequent plans of care, and the ongoing progress of each patient.
- 5007.2 Each Provider shall maintain accurate records reflecting the specific personal care services provided to each patient.
- 5007.3 Each Provider shall maintain patient records that are confidential, complete and contain up-to-date information relevant to each patient's care and treatment. For purposes of record confidentiality, the disclosure of treatment information by the Provider is subject to all the provisions of applicable District and Federal Laws.
- 5007.4 Each patient's record shall include written documentation of the patient's treatment needs and services. The documentation shall be written so that it is easily understood by a lay person.

- 5007.5 Each patient's record shall be kept in a locked room or file maintained and safeguarded against loss or unauthorized use.
- 5007.6 Each patient's record shall be available for review by MAA staff at all times.
- 5007.7 Each Provider shall maintain patient records for a minimum of six (6) years.
- 5007.8 Each patient's record shall include, but is not limited to, the following information:
- (a) Medical information, including the initial and annual assessments, and the initial certification and re-certifications of the plan of care;
 - (b) General information including each patient's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, physician's name, address and telephone number;
 - (c) Description and dates of services rendered, including the name of the personal care aide performing the services;
 - (d) Documentation of each supervisory visit of the registered nurse including signed and dated clinical progress notes;
 - (e) Extended authorizations for services;
 - (f) Discharge summary, if applicable; and
 - (g) Any other appropriate identifying information that is pertinent to patient care.

5008 PATIENT RIGHTS AND RESPONSIBILITIES

- 5008.1 Each Provider shall develop a written statement of patient rights and responsibilities consistent with the requirements of this section, which shall be given to each patient in advance of receiving services or during the initial assessment before the initiation of services.
- 5008.2 The written statement of patient rights and responsibilities shall be available for distribution to the general public.
- 5008.3 Each Provider shall develop policies which ensure that each patient receiving services has the following rights:

- (a) To be treated with courtesy, dignity and respect;
- (b) To control his or her own household and lifestyle;
- (c) To participate in the planning of his or her care and treatment;
- (d) To receive treatment, care and services consistent with the plan of care and to have the plan of care modified for achievement of outcomes;
- (e) To receive services by competent personnel who can communicate with the patient;
- (f) To refuse all or part of any treatment, care or service and be informed of the consequences;
- (g) To be free from mental and physical abuse, neglect and exploitation from persons providing services;
- (h) To be assured that for purposes of record confidentiality, the disclosure of the contents of the patient's records is subject to all the provisions of applicable District and federal laws;
- (i) To voice a complaint or grievance regarding treatment or care, lack of respect for personal property by persons providing services without fear of reprisal;
- (j) To have access to his or her records; and
- (k) To be informed orally and in writing of the following:
 - (1) Services to be provided, including any limits;
 - (2) The amount charged for each service, the amount of payment required by the patient and the billing procedures, if applicable;
 - (3) Whether services are covered by health insurance, Medicare, Medicaid or any other third party sources;
 - (4) Acceptance, denial, reduction or termination of services;
 - (5) Complaint and appeal procedures;
 - (6) The name, address and telephone number of the provider; and
 - (7) The telephone number of the Medicare Home Health Hotline and

hours of operation.

5008.4 Each patient shall be responsible for the following:

- (a) Treating all Provider personnel with respect and dignity;
- (b) Providing accurate information when requested;
- (c) Informing Provider personnel when instructions are not understood or cannot be followed; and
- (d) Cooperating in making a safe environment for care within the home.

5008.5 Each Provider shall take appropriate steps to ensure that each patient, including patients who cannot read or have a language or communication barrier, has received the information required pursuant to this section. Each Provider shall document in the records the steps taken to ensure that each patient has received the information.

5009 REIMBURSEMENT

5009.1 Each Provider shall be reimbursed \$13.50 per hour for services rendered by a PCA.

5009.2 Reimbursement for personal care services shall not exceed eight (8) hours of service per day per patient, or one thousand and forty (1,040) hours in any twelve (12) month period, unless prior authorization is obtained from MAA.

5009.3 MAA may limit or deny services, if the cost of the services in addition to other home care services, exceed the estimated cost of institutional care over a six (6) month period.

5009.4 Each Provider shall agree to accept as payment in full the amount determined by MAA as reimbursement for the authorized services provided to clients. Providers shall not bill the patient or any member of the patient's family for personal care services.

5009.5 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.

5010 AUDITS AND REVIEWS

5010.1 MAA shall perform ongoing audits to ensure that Medicaid payments are

consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.

- 5010.2 The audit process shall be routinely conducted by MAA to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid.
- 5010.3 Each Provider shall allow access, during an on-site audit or review by MAA, other District of Columbia government officials and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.
- 5010.4 If MAA denies a claim, MAA shall recoup, by the most expeditious means available, those monies erroneously paid to the Provider for denied claims, following the period of Administrative Review set forth in section 5011 of these rules.
- 5010.5 The recoupment amounts for denied claims shall be determined by the following formula: A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample. The denominator shall be the total number of paid claims from the audit sample. This fraction will be multiplied by the total dollars paid by MAA to the Provider during the audit period, to determine the amount recouped. For example, if a Provider received Medicaid reimbursement of ten thousand dollars (\$10,000) during the audit period, and during a review of the claims from the audited sample, it was determined that 10 claims out of 100 claims are denied, then ten percent (10%) of of the amount reimbursed by Medicaid during the audit period, or one thousand dollars (\$1000), would be recouped.
- 5010.6 MAA shall issue a Notice of Recoupment (NR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
- 5011 APPEALS FOR PROVIDERS AGAINST WHOM A RECOUPMENT IS MADE**
- 5011.1 The Provider shall have sixty days from the date of the NR to request an administrative review of the NR. The request for administrative review of the NR shall be submitted to Chief, Office of Program Integrity, Medical Assistance Administration, Department of Health.
- 5011.2 The written request for administrative review shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested.

- 5011.3 MAA shall mail a written determination relative to the administrative review to the Provider no later than one hundred and twenty (120) days from the date of the written request for administrative review pursuant to subsection 5011.1.
- 5011.4 Within forty-five (45) days of receipt of the Medicaid Program's written determination, the Provider may appeal the written determination by filing a written notice of appeal with the Board of Appeals and Review, 441 4th Street, NW, Suite 540 South, Washington, DC 20001.
- 5011.5 Filing an appeal with the Board of Appeals and Review shall not stay any action to recover any overpayment.

5099 DEFINITIONS

- 5099.1 When used in this chapter, the following terms and conditions shall have the following meanings:

Activities of Daily Living- The ability to get in and out of bed, bathe, dress, eat out, take medication prescribed for self-administration and to engage in toileting.

Advanced Practice Registered Nurse- A person who is licensed or authorized to practice as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*).

Family- Any person related to the client or recipient by blood, marriage or adoption.

Physician- A person who is licensed or authorized to practice medicine pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*).

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*).

**CHAPTER 51 MEDICAID REIMBURSEMENT FOR SERVICES
PROVIDED BY HOME HEALTH AIDES**

5100 GENERAL PROVISIONS

- 5100.1 These rules establish the standards and conditions of participation for providers of home health aide services ("Provider") under the District of Columbia Medicaid Program ("Medicaid Program").
- 5100.2 A home care agency seeking reimbursement for home health aide services shall meet the conditions of participation for home health agencies set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR 484, and shall comply with the requirements set forth in the Health-Care and Community Residence Facility Act, Hospice and Home-Care Licensure Act of 1983, effective Feb. 24, 1984 (D.C. Law 5-48; D.C. Official Code, § 44-501 et seq), and implementing rules.
- 5100.3 An entity seeking to participate as a provider of home health aide services under the Medicaid Program shall file an application on forms provided by the Department of Health, Medical Assistance Program (MAA).
- 5100.4 The Provider Application shall contain, but not be limited to, the following information:
- (a) Name and address of the Provider organization and location of all of the Provider's places of business in the District of Columbia and elsewhere in the United States;
 - (b) Names and addresses of the owners of the Provider organization;
 - (c) If the Provider organization is a corporation, the application shall include the names and addresses of all persons having a five percent (5%) or greater ownership interest and the names and addresses of all officers and directors of the organization; and
 - (d) The names and license numbers of the registered nurse or other appropriate health care professional who is responsible for supervising the home health aide.
- 5100.5 A provider may contract with a personnel staffing agency for staff to perform home health aide services. Agreements between the provider and a contractor for the provision of home health aide services shall be in writing and shall include at a minimum, the following requirements:
- (a) A description of the services to be provided;

- (b) Location of where the services are to be provided;
- (c) The manner in which the services are controlled, coordinated and evaluated by the home care agency;
- (d) The procedure for developing plans of care, submitting clinical and progress notes, scheduling of visits, preparing patient evaluations and other designated reports;
- (e) The procedures used for managing and monitoring the work of personnel employed on a contractual basis;
- (f) The procedure for payment for services and payment terms for services furnished;
- (g) The duration of the agreement, including provisions for renewal, if applicable; and
- (h) Assurances that the contractor will comply with:
 - (1) All applicable agency policies, including the assurance that contract personnel meet the qualifications and fulfill the responsibilities of agency employees in accordance with these rules;
 - (2) All insurance and bonding requirements as set forth in section 5101 of these rules; and
 - (3) All applicable federal and District laws and rules.

- 5100.6 A Provider must be certified by MAA as being in compliance with all requirements set forth in this chapter before participating in this Program.
- 5100.7 Each Provider shall enter into an agreement with MAA that specifies the services to be provided, methods of operation, and financial and legal requirements.
- 5100.8 Each Provider shall satisfy the requirements set forth in Title VI of the Civil Rights Law of 1964, including Section 504, which prohibits discrimination against the handicapped and comply with all applicable federal and District laws and rules.

5101 INSURANCE

5101.1 Each Provider shall maintain the following minimum amounts of insurance coverage:

- (a) Blanket malpractice insurance for all employees in the amount of at least one million dollars (\$1,000,000) per incident:
- (b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars (\$1,000,000) per occurrence: and
- (c) Product liability insurance, when applicable.

5102 ADMINISTRATION AND STAFFING

5102.1 Each Provider shall have a current organizational chart that clearly describes the organizational structure, staff responsibilities and lines of authority.

5102.2 Each Provider shall provide to all staff and subcontractors a current policy manual which sets forth all of its policies and procedures.

5102.3 Each policy manual shall include, but not be limited to, the following information:

- (a) A description of the services to be provided;
- (b) Procedures for patient care;
- (c) The reimbursement methodology or fee schedules;
- (d) Operational schedules;
- (e) Quality assurance standards;
- (f) A statement of patient rights and responsibilities;
- (g) Financial and record-keeping requirements;
- (h) Procedures for emergency care;
- (i) A description of staff and personnel policies, which shall be reviewed by designated Provider staff annually, revised as necessary and dated at time of review;
- (j) A description of each staff position and procedures for employee hiring, evaluations, grievances and in-service training; and

- (k) An up-to-date listing of professional staff licensure and registration information.
- 5102.4 Each Provider shall be staffed with individuals who are qualified to perform the following functions:
- (a) Verify and document each patient's Medicaid eligibility;
 - (b) Provide quality services in accordance with the plan of care, including the proper assignment and supervision of home health aides; and
 - (c) Coordinate the provision of services provided by the home health aides with other home health services, as appropriate.
- 5102.5 Each Provider shall employ a registered nurse who is responsible for the following:
- (a) Performing the initial evaluation of the patient and regularly reevaluating the patient's needs;
 - (b) Monitoring the quality of the services on a regular basis;
 - (c) Supervising the home health aide, in accordance with the requirements set forth in §5102.7 through §5102.09;
 - (d) Developing and reviewing the plan of care and preparing clinical and progress notes;
 - (e) Coordinating services and informing the physician and others involved in patient care of changes in the patient's condition and needs;
 - (f) Gathering information regarding the patient's condition and the need for continued care; and
 - (g) Counseling the patient and the family regarding meeting nursing and related needs.
- 5102.6 The registered nurse shall visit each patient within 48 hours of initiating services to monitor the quality of services provided.
- 5102.7 If the patient is receiving skilled nursing care, a registered nurse shall be responsible for the supervision of the home health aide and shall make an on-site visit to the patient no less frequently than every 2 weeks to ensure that the aide is properly caring for the patient.

- 5102.8 If the patient is receiving physical therapy, occupational therapy, or speech-language pathology services, supervision may be provided by the physical therapist, occupational therapist, speech pathologist or registered nurse, who shall make an on-site visit to the patient no less frequently than every 2 weeks to ensure that the aide is properly caring for the patient.
- 5102.9 The registered nurse may provide an additional supervisory visit to each patient if the situation warrants an additional visit, such as the assignment of a new aide or change in the patient's health status.
- 5102.10 Each Provider shall discontinue services when such services are no longer required or have been determined inadequate to meet a patient's needs.
- 5102.11 Each Provider shall notify MAA and the patient or patient's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. The seven (7) day written notice shall not be required, and oral notice may be given, if the discharge or referral is the result of:
- (a) A medical emergency;
 - (b) A physician's order to admit the patient to an inpatient facility;
 - (c) A determination by the home care agency that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
 - (d) A determination by a physician that the condition that necessitated the provision of services no longer exists.
- 5102.12 If the patient seeks to change providers, the Provider shall assist the patient in selecting a new provider and cannot abandon the patient until the transfer has been successfully completed.
- 5102.13 Each Provider shall immediately terminate the services of a home health aide and instruct the aide to discontinue all services to the patient, in any case where the Provider believes that the patient's physical or mental well-being is endangered by the care or lack of care, provided by the aide or that the patient's property is at risk.
- 5102.14 Each Provider shall conduct a performance evaluation of each home health aide after the first three (3) months of employment and annually thereafter.
- 5102.15 Each Provider shall develop contingency staffing plans to provide coverage for each patient in the event the assigned home health aide cannot provide the services or is terminated.

5103 HOME HEALTH AIDES

5103.1 Each home health aide shall meet the following qualifications:

- (e) Be at least 18 years of age;
- (f) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
- (g) Complete a home health aide training program that includes at least seventy- five (75) hours of classroom training with at least sixteen (16) hours devoted to supervised practical training and pass a competency evaluation for those services which the home health aide is required to perform consistent with the requirements set forth in 42 CFR 484.36;
- (h) Be certified in cardiopulmonary resuscitation ("CPR") and thereafter obtain CPR certification annually;
- (i) Be able to read and write the English language at the fifth (5th) grade level and carry out instructions and directions;
- (j) Be able to recognize an emergency and be knowledgeable about emergency procedures;
- (k) Be knowledgeable about infection control procedures;
- (l) Be acceptable to the patient;
- (m) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (n) Pass a criminal background check pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code, § 44-551 et seq.); and
- (o) Provide documentation of acceptance or declination of the Hepatitis vaccine.

5103.2 After the first year of service, each home health aide shall complete at least twelve hours of continuing education or in-service training annually. The in-service training may be furnished while the aide is furnishing care to the patient under the supervision of a registered nurse or other appropriate health care professional.

5104 PROGRAM SERVICES

- 5104.1 Home health aide services shall be prescribed by a physician in accordance with the patient's plan of treatment.
- 5104.2 Home health aide services shall be initiated no later than 48 hours after completion of the initial assessment unless the patient or the patient's representative agree to a later date to begin the services.
- 5104.3 Home health aide services shall be provided by an individual who is not a member of the patient's family.
- 5104.4 Home health aide services include, but are not limited to, the following:
- (a) Basic personal care including bathing, grooming and assistance with toileting, or bed pan use;
 - (b) Changing urinary drainage bags;
 - (c) Assisting patients with self-administered medications;
 - (d) Reading and recording temperature, pulse, and respiration;
 - (e) Assisting patients with transfer, ambulation and exercises as directed by the nurse or therapist;
 - (f) Simple dressing changes that do not require the skills of a licensed nurse;
 - (g) Assisting patients with activities that are directly supportive of skilled therapy services;
 - (h) Routine care of prosthetic and orthotic devices;
 - (i) Observing and documenting the patient's status and reporting all services provided;
 - (j) Meal preparation in accordance with dietary guidelines and assistance with eating;
 - (k) Recording and reporting to the supervisory health professional, changes in the patient's physical condition, behavior or appearance;
 - (l) Infection control; and
 - (m) Tasks related to keeping the patient's living areas in a condition that

promotes the patient's health and comfort.

5104.5 Home health aide services shall not include services that require the skills of a licensed professional, such as catheter insertion, procedures requiring the use of sterile techniques and administration of medication.

5104.6 Home health aide services shall not include tasks usually performed by chore workers, such as cleaning of areas not occupied by the patient, laundry for family members and shopping for items not used by the patient.

5104.7 Home health aide services shall be provided in the patient's place of residence subject to the exclusions set forth in §5104.8 and shall be made available seven (7) days per week.

5104.8 Home health aide services shall not be provided in a hospital, nursing facility, intermediate care facility for the mentally retarded or institution for mental disease.

5105 ELIGIBILITY REQUIREMENTS

5105.1 A Medicaid recipient who meets the following qualifications is eligible to receive home health aide services:

- (a) The Medicaid recipient has received an initial assessment in which the recipient is determined to have functional limitations in one or more activities of daily living;
- (b) The Medicaid recipient is currently receiving skilled nursing care, physical or occupational therapy, or speech-language pathology services; and
- (c) The physician or other appropriate health care professional, after evaluation of the Medicaid recipient, has an expectation that the medical, nursing and social needs can be safely, adequately and appropriately met in the recipient's home.

5106 PLAN OF CARE

5106.1 Each Provider shall conduct an initial assessment of the patient's functional status and needs within forty-eight (48) hours of receiving the referral for services.

5106.2 Each Provider shall develop a written plan of care within seventy-two (72) hours of the initial evaluation of the patient based upon an assessment of the patient's functional limitations.

5106.3 The plan of care shall specify the frequency, duration and expected outcome of the

services rendered.

- 5106.4 The plan of care shall be approved by the patient's physician and re-certified no less than every six (6) months after the initial certification and each re-certification thereafter.
- 5106.5 The plan of care shall be re-certified by the physician after any interruption of service, including hospital admissions, greater than fourteen (14) days.
- 5106.6 The plan of care shall be reviewed by the registered nurse no later than once every sixty-two (62) days, updated or modified as needed and signed by the physician within thirty (30) days of prescription. If a plan of care is revised by telephone order, the telephone order shall be immediately reduced to writing and signed by the physician within thirty (30) days of its prescription.

5107 RECORDS

- 5107.1 Each Provider shall maintain accurate records reflecting past and current findings, the initial and subsequent plans of care, and the ongoing progress of each client.
- 5107.2 Each Provider shall maintain accurate records reflecting the specific services provided to each client.
- 5107.3 Each Provider shall maintain patient records that are confidential, complete and contain up-to-date information relevant to each patient's care and treatment. For purposes of record confidentiality, the disclosure of treatment information by the Provider is subject to all the provisions of applicable District and Federal Laws.
- 5107.4 Each patient's record shall include written documentation of the patient's treatment needs and services. The documentation shall be written so that it is easily understood by a lay person.
- 5107.5 Each patient's record shall be kept in a locked room or file maintained and safeguarded against loss or unauthorized use.
- 5107.6 Each patient's record shall be available for review by MAA staff at all times.
- 5107.7 Each Provider shall maintain patient records for a minimum of six (6) years.
- 5107.8 Each patient's record shall include, but is not limited to, the following information:
- (a) Medical information, including the initial and annual assessments, and the initial certification and re-certifications of the plan of care;

- (b) General information including each patient's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, physician's name, address and telephone number;
- (c) Description and dates of services rendered, including the name of the home health aide performing the services;
- (d) Documentation of each supervisory visit of the registered nurse or therapist, including signed and dated clinical progress notes;
- (e) Extended authorizations for services;
- (f) Discharge summary, if applicable; and
- (g) Any other appropriate identifying information that is pertinent to patient care.

5108 PATIENT RIGHTS AND RESPONSIBILITIES

- 5108.1 Each Provider shall develop a written statement of patient rights and responsibilities consistent with the requirements of this section, which shall be given to each patient in advance of receiving services or during the initial assessment before the initiation of services.
- 5108.2 The written statement of patient rights and responsibilities shall be available for distribution to the general public.
- 5108.3 Each Provider shall develop policies which ensure that each patient receiving services has the following rights:
 - (a) To be treated with courtesy, dignity and respect;
 - (b) To control his or her own household and lifestyle;
 - (c) To participate in the planning of his or her care and treatment;
 - (d) To receive treatment, care and services consistent with the plan of care and to have the plan of care modified for achievement of outcomes;
 - (e) To receive services by competent personnel who can communicate with the patient;
 - (f) To refuse all or part of any treatment, care or service and be informed of the consequences;

- (g) To be free from mental and physical abuse, neglect and exploitation from persons providing services;
- (h) To be assured that for purposes of record confidentiality, the disclosure of the contents of the patient's records is subject to all the provisions of applicable District and federal laws;
- (i) To voice a complaint or grievance regarding treatment or care, lack of respect for personal property by persons providing services without fear of reprisal;
- (j) To have access to his or her records; and
- (k) To be informed orally and in writing of the following:
 - (1) Services to be provided, including any limits;
 - (2) The amount charged for each service, the amount of payment required by the patient and the billing procedures, if applicable;
 - (3) Whether services are covered by health insurance, Medicare, Medicaid or any other third party sources;
 - (4) Acceptance, denial, reduction or termination of services;
 - (5) Complaint and appeal procedures;
 - (6) The name, address and telephone number of the provider; and
 - (7) The telephone number of the Medicare Home Health Hotline and hours of operation.

5108.4 Each patient shall be responsible for the following:

- (a) Treating all Provider personnel with respect and dignity;
- (b) Providing accurate information when requested;
- (c) Informing Provider personnel when instructions are not understood or cannot be followed; and
- (d) Cooperating in making a safe environment for care within the home.

5108.5 Each Provider shall take appropriate steps to ensure that each patient, including

patients who cannot read or have a language or communication barrier, has received the information required pursuant to this section. Each Provider shall document in the records the steps taken to ensure that each patient has received the information.

5109 REIMBURSEMENT

- 5109.1 Each Provider shall be reimbursed \$14.50 per hour for services rendered by a home health aide.
- 5109.2 Reimbursement for services of a home health aide shall not exceed four (4) hours of service per day per patient, unless prior authorization is obtained from MAA.
- 5109.3 Services provided by a home health agency and authorized in the plan of care may not exceed 36 visits per year per patient, unless prior authorization is obtained from MAA. The 36 visit limitation includes services performed by all disciplines included in the Medicare certification of a home health agency which are certified by a physician as medically necessary in the patient's treatment plan.
- 5109.4 MAA may limit or deny services, if the cost of the services in addition to other home care services, exceed the estimated cost of institutional care over a six (6) month period.
- 5109.5 Each Provider shall agree to accept as payment in full the amount determined by MAA as reimbursement for the authorized services provided to clients. Providers shall not bill the patient or any member of the patient's family for services.
- 5109.6 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.

5110 AUDITS AND REVIEWS

- 5110.1 MAA shall perform ongoing audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.
- 5110.2 The audit process shall be routinely conducted by MAA to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid.
- 5110.3 Each Provider shall allow access, during an on-site audit or review by MAA , other District of Columbia government officials and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.

- 5110.4 If MAA denies a claim, MAA shall recoup, by the most expeditious means available, those monies erroneously paid to the Provider for denied claims, following the period of Administrative Review set forth in section 5111 of these rules.
- 5110.5 The recoupment amounts for denied claims shall be determined by the following formula: A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample. The denominator shall be the total number of paid claims from the audit sample. This fraction will be multiplied by the total dollars paid by MAA to the Provider during the audit period, to determine the amount recouped. For example, if a Provider received Medicaid reimbursement of ten thousand dollars (\$10,000) during the audit period, and during a review of the claims from the audited sample, it was determined that 10 claims out of 100 claims are denied, then ten percent (10%) of of the amount reimbursed by Medicaid during the audit period, or one thousand dollars (\$1000), would be recouped.
- 5110.6 MAA shall issue a Notice of Recoupment (NR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
- 5111 APPEALS FOR PROVIDERS AGAINST WHOM A RECOUPMENT IS MADE**
- 5111.1 The Provider shall have sixty days from the date of the NR to request an administrative review of the NR. The request for administrative review of the NR shall be submitted to Chief, Office of Program Integrity, Medical Assistance Administration, Department of Health.
- 5111.2 The written request for administrative review shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested.
- 5111.3 MAA shall mail a written determination relative to the administrative review to the Provider no later than one hundred and twenty (120) days from the date of the written request for administrative review pursuant to subsection 5111.1.
- 5111.4 Within forty-five (45) days of receipt of the Medicaid Program's written determination, the Provider may appeal the written determination by filing a written notice of appeal with the Board of Appeals and Review, 441 4th Street, NW, Suite 540South, Washington, DC 20001.
- 5111.5 Filing an appeal with the Board of Appeals and Review shall not stay any action to recover any overpayment.

5199 DEFINITIONS

5199.1 When used in this chapter, the following terms and conditions shall have the following meanings:

Activities of Daily Living- The ability to get in and out of bed, bathe, dress, eat out, take medication prescribed for self-administration and to engage in toileting.

Family- Any person related to the client or recipient by blood, marriage or adoption.

Occupational Therapist- A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*).

Physical Therapist- A person who is licensed or authorized to practice physical therapy pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*).

Physician- A person who is licensed or authorized to practice medicine pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*).

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*).

Speech Pathologist - Any individual engaged in the lawful practice of speech pathology.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGET 03-1, In the Matter of the Application of the Potomac Electric Power Company to
Modify Schedule "SSL-UG" Servicing Street Lights-Underground

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action taken on May 14, 2003, in Order No. 12732, approving the Application of the Potomac Electric Power Company ("PEPCO" or "the Company") to Modify Schedule "SSL-UG" charges for Servicing Street Lights-Underground charges filed January 15, 2003.¹ Under the Streetlight Agreement, the Parties agreed to increase the Street Light Service rate, Schedule "SSL-UG" of PEPCO's District of Columbia tariff, charged to the National Park Service ("NPS") by \$4,181,922 to reflect expenditures made by PEPCO to upgrade the NPS street light system. The NPS is the only customer receiving service under this schedule.

2. On December 10, 2001, the Company filed an application with the Commission to increase the NPS Street Light Service rates by \$4,181,922. The Commission approved the increase effective March 8, 2002.² On September 23, 2002, the Parties executed Amendment No. 1 to the Streetlight Agreement. Under Amendment No. 1, the Parties agreed that NPS would pay PEPCO \$2.3 million on or before October 15, 2002 and that the NPS would pay the remainder of the \$4,181,922 during the second quarter of the Federal Fiscal Year 2003.³ The Parties agreed to ask the Commission to reduce the Company's SSL-UG by \$4,181,922 within 30 days after the NPS had fully paid PEPCO.⁴ On September 25, 2002, the Service paid \$2.3 million to PEPCO.⁵

3. On November 18, 2002, the Parties executed Amendment No. 2 to the Streetlight Agreement that modified Amendment No. 1 to reduce the Company's schedule SSL-UG by \$2.3 million rather than by the full \$4,181,922 as contemplated in Amendment No. 1. The Parties agreed to petition the Commission to reduce the schedule SSL-UG within 60 Federal working days of the date Amendment No. 2 was executed.⁶ The Parties also agreed that the Service

¹ *Electric Tariff 03-1, In the Matter of the Application of the Potomac Electric Power Company to Modify Schedule "SSL-UG" Service Street Lights-Underground*, Order No. 12732 (May 14, 2003).

² *Electric Tariff 01-1, In the Matter of the Application of the Potomac Electric Power Company to Revise Schedule "SSL-UG" Service Street Lights-Underground*, Order No. 12326 (Feb. 26, 2002).

³ PEPCO's Application at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

would not pay the remaining balance during the second quarter of the Federal Fiscal Year 2003.⁷ PEPCO affirmatively states that the approval of this Application will not affect the rates of any other customer or customer class.⁸ A Notice of Proposed Rulemaking was issued on February 21, 2003.⁹ The Commission, in Order No. 12732, approved PEPCO's Application, effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

⁷ *Id.*

⁸ *Id.*

⁹ 49 *D.C. Register* 1764-1765 (2003).

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

DOCKET NUMBER 02-37-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following rulemaking which amends the Vehicle and Traffic Regulations (18 DCMR). Final action to adopt this rulemaking was taken on May 5, 2003. No comments have been received and no changes have been made to the text of the proposal as published on December 13, 2002 at 49 DCR11307. This final rulemaking will be effective when published in the D.C. Register.

Title 18 DCMR, Section 4002, TRUCK RESTRICTIONS, Subsection 4002.1, (b) Northeast Section, is amended by adding the following to the list of locations where TRUCK RESTRICTIONS are installed:

“On T Street , N.E., from 4th to North Capitol Streets”.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

DOCKET NUMBER 02-56-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following rulemaking which amends the Vehicle and Traffic Regulations (18 DCMR). Final action to adopt this rulemaking was taken on May 6, 2003. No comments have been received and no changes have been made to the text of the proposal as published on November 22, 2002 at DCR V50/47/10628. This final rulemaking will be effective when published in the D.C. Register.

Title 18 DCMR, Section 4002, TRUCK RESTRICTIONS, Subsection 4002.1 (a) Northwest Section, is amended by adding the following to the list of locations where TRUCK RESTRICTIONS are installed:

“21st Street, N.W., between Massachusetts and Florida Avenues”.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

DOCKET NUMBER 02-93-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following rulemaking which amends the Vehicle and Traffic Regulations (18 DCMR). Final action to adopt this rulemaking was taken on May 6, 2003. No comments have been received and no changes have been made to the text of the proposal as published on April 4, 2003 at 50 DCR 2611. This final rulemaking will be effective when published in the D.C. Register.

Title 18 DCMR, Section 4004, ONE-WAY STREETS, Subsection 4004.1, (b) Northeast Section, is amended by adding the following to the list of locations where traffic is restricted to one direction of travel:

“Kennedy Street, N.E., between 1st Street and Blair Road, for westbound traffic only”.

Title 18 DCMR, Section 4008, STOP SIGNS, Subsection 4008.1, (b) Northeast Section, is amended by deleting the following from the list of locations where STOP signs are placed:

“On eastbound Kennedy Street, N.E., so as to stop at 1st Street”.

Title 18 DCMR, Section 4015, “NO LEFT TURN” RESTRICTION, Subsection 4015.5, (b) Northeast Section, is amended by adding the following to the list of locations where Left Turns are restricted between 7:00-9:30 a.m. and 4:00-6:30 p.m., Monday-Friday:

“Northbound 1st street, N.E., so as to proceed west on Kennedy Street”.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

DOCKET NUMBER 03-20-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and §§ 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following rulemaking which amends chapter 40 of the Vehicles and Traffic Regulations (18 DCMR). Final action to adopt this rulemaking was taken on May 13, 2003. No comments have been received and no changes have been made to the text of the proposal as published on April 4, 2003 at 50 DCR 2613. This final rulemaking will be effective when published in the D.C. Register.

Title 18 DCMR, § 4004, ONE-WAY STREETS, § 4004.1.Northeast Section (a), is amended by deleting the following from the list of locations where traffic is restricted to one direction of travel:

“On Grace Street, N.W., between K Street and Wisconsin Avenue, N.W.”.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Order No. 970
Z.C. CASE NO. 01-22MA
(Map Amendment – New York and Florida Avenues, N.E.
Square 3584, Lots 23 and 809)**

The Zoning Commission for the District of Columbia, pursuant to its authority under Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended; D.C. Official Code 2001 Ed. § 6-641.01), hereby gives notice of the adoption of an amendment to the Zoning Map of the District of Columbia in the manner described below. The map amendment applies to Lots 23 and 809 in Square 3584 near the intersection of New York and Florida Avenues, N.E., and would rezone the properties from M to C-3-C. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the *D.C. Register* on January 17, 2003, at 50 DCR 572. The Commission took final action to adopt these amendments at a public meeting held on March 10, 2003.

This final rulemaking will be effective upon publication of this notice in the *D.C. Register*.

The Commission initiated this amendment in response to a request from the property owner of Lot 809 and the Office of Planning (OP), who recommended adding Lot 23 to the map amendment originally proposed.

The purpose of this rezoning initiative was to adopt a zoning designation for the subject properties that is not inconsistent with the Comprehensive Plan Amendments Act of 1994.

Existing Zoning

As noted by OP in its report, Square 3584 is part of an industrial area that stretches along the railroad tracks from the north side of Florida Avenue to Rhode Island Avenue, NW. The M zone parallels those tracks. For much of the length, C-M-2 zoning provides a buffer between the heavy industrial zone and the residential R-4 zone district to the west.

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Description of Map Amendment

Rezoning is proposed from M to C-3-C, in order to accommodate the New York Avenue Metro Station, now under construction, and to bring the area more in line with the Comprehensive Plan and the surrounding area. Other areas within the square were not proposed for rezoning as they are functionally separate due to the demarcation lines established by active rail uses.

The original proposal also requested that Lot 809 be included in the North Capitol Area Receiving Zone. However, in light of recommendation by OP not to include Lot 809 in the receiving area, the owner of Lot 809 withdrew the request.

Relationship to Comprehensive Plan

As noted by OP, the map amendment is not inconsistent with the Generalized Land Use Map (Map) of the Comprehensive Plan, but not completely consistent with the Plan's Land Use Element.

The Map designates the two advertised parcels as appropriate for Medium-High Density Commercial use. Also, the property is within the area the Land Use Element of the Comprehensive Plan designates, in Section 1121, for high technology and light industrial uses. However, the designation in Section 1121 predated the plans to construct a Metro station at New York and Florida Avenues. The platform of the Metrorail station will be located within 100 feet of Lot 809.

The amendment is in congruence with the following sections of the District Element of the Comprehensive Plan: § 1134.1, which sets out Transit Oriented Development objectives for Metrorail area development; § 1606.1(c)(2), which recognizes North Capitol Street, New York Avenue and First Street, N.E., as a priority economic development area; and § 209.6(b)(3) of the Economic Development Element of the Comprehensive Plan, which details the economic development strategy of creating a Metrorail station near New York Avenue and Florida Avenue, N.E. "enabling a large area of currently vacant and underutilized land and buildings to be developed for thousands of new jobs and housing opportunities."

Public Hearing

The Commission held a public hearing on November 4, 2002. At that hearing, the Manager of Property Planning and Development for the Washington Metropolitan Area Transit Authority spoke in favor of the proposed rezoning. A representative of the law firm of Holland & Knight appeared on behalf of the owner of Lot 809.

Proposed Rulemaking

At the conclusion of the hearing, the Commission took proposed action pursuant to 11 DCMR 3027.2. A notice of proposed rulemaking was published in the *D.C. Register* on January 17, 2003, at 50 DCR 572. The proposed rulemaking called for a 45-day period of public comment,

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in order to allow ANC 5C, who had not received notice of the hearing, time to file any comments. ANC 5C was notified, in writing, that it had until December 19, 2002, to submit comments in writing. No comments regarding the proposed rulemaking were received.

The proposed rulemaking was referred to the National Capitol Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated December 9, 2002, found that the proposed map amendment would not adversely effect federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capitol.

The Office of the Corporation Counsel has determined that this rulemaking meets the standards of legal sufficiency.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on March 10, 2003. No changes were made to the proposed rulemaking.

Based upon the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interests of the District of Columbia in that the rezoning will foster the type of economic development that is appropriate in the area adjacent to the proposed Metrorail station and will allow uses consistent with other existing and proposed uses in the surrounding area. The amendment is also consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to the Zoning Map.

1. Square 3584, Lots 23 and 809 – rezone from M to C-3-C.

Vote of the Zoning Commission taken at its public hearing on November 4, 2002, to approve the propose rulemaking 5-0-0 (Carol J Mitten, John G. Parsons, Anthony J. Hood, Peter G. May, and James H. Hannaham).

This order was adopted by the Zoning Commission at its public meeting of March 10, 2003, by a vote of 5-0-0 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, Peter G. May, and James H. Hannaham to approve).